

ALLIGARE, LLC

VS.

HD MACHINES, LLC

RECEIVED
THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA

2018 MAY -8 A 12 05
DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT

PLAINTIFF

Civil Action No. 3:18-cv-474

DEFENDANT

COMPLAINT

The plaintiff, Alligare, LLC ("Alligare") submits this complaint against defendant HD Machines, LLC ("HD Machines").

Parties

1. The plaintiff, Alligare, is a Delaware Limited Liability Company, properly registered in Alabama, with a primary location in Opelika, Alabama.
2. The defendant, HD Machines, is a Mississippi Limited Liability Company located in Meridian, Mississippi.

Jurisdiction

3. This Court has jurisdiction over this matter under 28 U.S.C. § 1332 based on diversity of citizenship.
4. Alligare's members are Welsh Holdings, Inc. ("Welsh") and Makhteshim-Agan of North America, Inc. ("Makhteshim-Agan").
5. Welsh is an Alabama corporation, and its principal place of business is located in Alabama.
6. Makhteshim-Agan is a Delaware corporation, properly registered in North Carolina, with its principal place of business in North Carolina.
7. HD Machine's sole member, Jetson Taylor, is a citizen of Mississippi.
8. The amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

Venue

9. Venue is proper in this judicial district under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to Alligare's claims occurred within this judicial district and a substantial part of the property that is the subject of the action is situated in this district.

Facts

10. Among other types of products, Alligare sells chemicals used for vegetation management.
11. On January 11, 2009, Alligare and HD Machines entered into an Agreement (Agreement 1), attached hereto as "EXHIBIT A" whereby HD Machines would purchase various products from Alligare.
12. Between January 11, 2009, and July 31, 2013, HD Machines did not comply with the terms of Agreement 1, and fell behind in payments due to Alligare.
13. As of July 31, 2013, HD Machines had a negative account balance with Alligare in the amount of \$1,754,097.20.
14. On July 31, 2013, Alligare and HD Machines entered into an Agreement (Agreement 2), attached hereto as "EXHIBIT B", whereby HD Machines would continue, with certain exceptions, to exclusively purchase products from Alligare, for and in consideration of Alligare providing for a payment schedule to satisfy the past-due account balance, which was included as a part of said Agreement 2.
15. Between July 31, 2013, and March 1, 2014, HD Machines did not comply with the terms of Agreement 2, and again fell behind in payments due to Alligare.
16. As of March 1, 2014, HD Machines had a negative account balance with Alligare in the amount of \$3,546,955.54.
17. On March 1, 2014, Alligare and HD Machines entered into a new Agreement (Agreement 3), attached hereto as "EXHIBIT C", whereby HD Machines would continue, with certain exceptions, to exclusively purchase products from Alligare, for and in consideration of Alligare providing for a payment schedule to satisfy the past-due account balance, which was included as a part of said Agreement 3.
18. On October 6, 2014, Alligare and HD Machines entered into an Amended Agreement (Agreement 4), attached hereto as "EXHIBIT D", extending the end date of Agreement 3 from December 31, 2018 to December 31, 2023. In return, Alligare would, upon notice of a lesser price offered by a competitor, either match the lesser price, or allow HD Machines to purchase from said competitor.
19. Further, on October 6, 2014, Alligare and HD Machines entered into a Letter Agreement (Agreement 5), attached hereto as "EXHIBIT E", setting out and clarifying terms for combined past-due and future monthly payments.

20. At all times hereunder, Alligare delivered the products requested by HD Machines, and HD Machines accepted the products.
21. Alligare has periodically balanced the account and rendered a statement to HD Machines.
22. HD Machines has never disputed the amount of the statements.
23. Alligare routinely provided products to HD Machines on account, and HD Machines made payments on said account.
24. The current past-due account balance owed to Alligare by HD Machines is \$998,778.70.
25. HD Machines has failed to make payments in accordance with Agreement 5.
26. Further, Alligare has recently discovered that HD Machines has been purchasing products from competitors of Alligare in breach of the various referenced Agreement 3, as amended by Agreement 4.

Count One: Breach of Contract

27. Plaintiff adopts and incorporates paragraphs one through twenty-six as if set forth herein verbatim.
28. Alligare, LLC, and HD Machines, LLC, entered into a valid and binding contract.
29. HD Machines' failure to make required payments under the Agreements constitutes breach of the contract.
30. HD Machines' purchase of products from another vendor constitutes breach of contract.
31. Alligare, LLC, has suffered damages as a proximate result of HD Machines' breach of contract.
32. As a result of its breach of the Agreement, HD Machines is liable for all of the remaining unpaid amounts reflected in the Invoices.

Count Two: Open Account

33. Plaintiff adopts and incorporates paragraphs one through thirty-two as if set forth herein verbatim.
34. Defendant owes Plaintiff \$998,778.70 on open account.

Count Three: Account Stated

35. Plaintiff adopts and incorporates paragraphs one through thirty-four as if set forth herein verbatim.
36. Defendant owes Plaintiff \$998,778.70 on account stated.

Relief Requested

ACCORDINGLY, Alligare respectfully requests that the Court enter a judgment in its favor and against HD Machines awarding Alligare the following:

- (i) Damages for the unpaid amounts reflected in the invoices totaling \$998,778.70,
- (ii) All other damages caused by HD Machines' breaches in an amount to be proven at trial,
- (iii) Pre and post judgment interest and
- (iv) All other relief that the Court deems appropriate.

Respectfully Submitted this the 7th day of May 2018.

//s/ J. Brandon Rice
J. Brandon Rice (RIC-060)
ASB 0490-N52R
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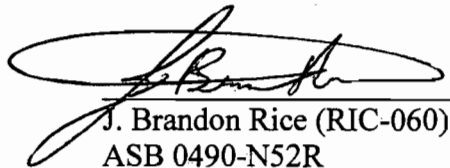
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Defendant's Address for Service:

HD Machines, LLC
c/o Jetson Taylor, its registered agent
414 Hwy 11 & 80 East
Meridian, MS 39301